

***Michigan's
Wetlands
Program***



Department of Environmental Quality

Wetlands are a significant factor in the health and existence of other natural resources of the state, such as inland lakes, ground water, fisheries, wildlife, and the Great Lakes.

- Wetlands cover roughly 5.5 million acres of Michigan (only 15 percent of the land area of the state.)
- Over 50% of Michigan's original wetlands have been drained or filled, making the protection of remaining wetlands that much more important.



Wetlands serve as fish and wildlife habitat by providing breeding, nesting, and feeding areas.



What is a Wetland?

Section 30301(w) "Wetland" means land characterized by the presence of water at a frequency and duration sufficient to support, and that under normal circumstances does support, wetland vegetation or aquatic life, and is commonly referred to as a bog, swamp, or marsh."

Pictures of floodplain wetland taken two weeks apart.



Section 30301(w) of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, PA 451, of 1994, as amended.

PA 120 of 2009 added the requirement that the DEQ use the federal wetland delineation manual to identify and delineate wetlands. Therefore the method to identify wetlands in Michigan is now the same as the rest of the nation.

In Michigan's wetland statute, the legislature recognized the following benefits provided by wetlands:

- Flood and storm control.
- Wildlife habitat.
- Protection of ground water.
- Protection of water quality.
- Shoreline erosion control.
- Nursery grounds and sanctuaries for fish.

These benefits, often referred to as wetland functions and values, play a vital role in recreation, tourism, and the economy in Michigan.

50% of the state's rare plant species are dependent upon wetlands.



Section 30302 of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, PA 451, of 1994, as amended.

Economic values

State Migratory bird hunting
\$21.7 million/year



Recreation

Saginaw Bay coastal wetlands
\$239 million in present worth

Ecosystem services
NJ – freshwater wetlands
\$9.4 billion/year



\$21.7 million for migratory bird hunting – based on DNR survey of duck and goose hunters for 2006

When wetlands are lost, our waters, watersheds, and wildlife suffer:

- With the loss of flood storage, damage to agricultural and urban lands increases.
- With the loss of summer recharge from wetlands, stream flow declines, and water tables drop impacting recreation, agriculture and industry.
- As the wetland buffers between uplands and our open waters are lost, shoreline erosion and pollution of those waters increases.

Program History

1972 – Clean Water Act was passed

***1977 – Michigan Developed a Joint Permit Application
with the Corps of Engineers***

***1979 - Passage of Wetland Protection Act, with
intention to assume administration of federal permit
program***

***1984 - Michigan became the first state to receive EPA
approval to administer the Clean Water Act Section
404 Permit Program.***

DEQ currently authorizes about 4,000 projects annually under Michigan's Section 404 program, providing the citizens of the state with a significant savings in time and money.



DEQ approves over 98% of the applications.

Consolidated Joint Permit Application process:

- Submittal of one application with review and authorizations under multiple Parts of Natural Resources and Environmental Protection Act.
 - Parts 31(floodplains), 301, 303, 315, 323, 325, and 353
- Single application fee for most projects.
- Coordination with Corps of Engineers when required.
- Results in an efficient, cost effective, streamlined permitting process for applicants.

Part 303, Wetland Protection

Protects wetland functions and values by requiring permits for activities within *regulated* wetlands.

State law clearly defines what wetlands are regulated.



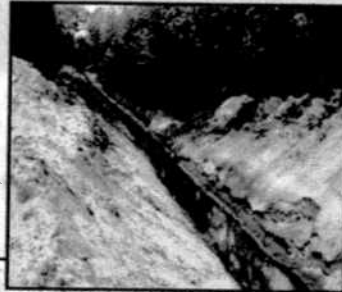
Regulated wetlands:

- **Connected to other waters**
- **Within 500 feet of inland waters, or 1000 feet of the Great Lakes**
- **More than 5 acres in size**
- **State has determined that the wetland is essential to the preservation of the state's natural resources.**

Statewide wetland regulation was passed in 1979, is now Part 303, Wetland Protection, of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended. Unlike federal law, the Michigan law provides clear definitions of what wetlands are regulated. Because of the ambiguity in federal law, the scope of regulated wetlands has been defined by the federal courts and has changed several times in the last decade. The Corps of Engineers now must do a jurisdictional determination prior to beginning to review a permit application. This jurisdictional determination can delay permit processing by several months. Because Michigan law contains clear measurable criteria, property owners, consultants and DEQ staff can easily determine if a wetland is regulated.

Regulated activities are defined in statute

- **Deposit or permit the placing of fill material in a wetland.**
- **Dredge, remove, or permit the removal of soil or minerals from a wetland.**
- **Construct, operate, or maintain any use or development in a wetland.**
- **Drain surface water from a wetland**

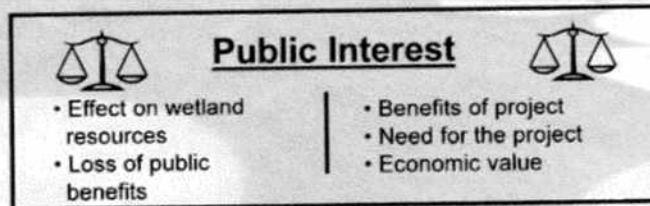


Section 30304 of Part 303. Federal law is less specific. The Corps of Engineers, must rely on guidance documents and various court decisions to determine what activities are regulated under federal law.

Permit Review

The Statute requires the DEQ to determine the following before a permit can be issued:

- The permit is in the public interest.
- The permit would be otherwise lawful.
- The permit is necessary to realize the benefits from the activity.
- No unacceptable disruption to aquatic resources would occur.
- The proposed activity is wetland dependent *or* no feasible and prudent alternatives exist.



The permitting criteria are defined in Section 30311. The criteria balance the public values of the wetland with the benefits of the proposed project.

Permit Processing

Unlike the federal permit program, Michigan's wetland permit processing is completed within a deadline mandated by the statute.

Statutory deadline is 90 days from receipt of a complete application or 150 days if a public hearing is held.

★ In 2010, the average wetland permit processing time was 30 days.

The federal law has no permit processing deadlines.

A wetland permit issued by **Michigan** typically carries with it the following authorizations, at no additional expense, time, or paperwork for the applicant:

- Authorization under Section 404 of the Federal **Clean Water Act**
- Water Quality **Certification** under Section 401 of the Clean Water Act
- Coastal Management Program **Certification**
- Screening and coordination with state and federal endangered species programs
- **Screening and** coordination with the federal **historic preservation** program

In many other states, applicants must apply for these authorizations separately.

State - Federal Consistency

To maintain Michigan's authorization under the CWA Section 404 state law must remain consistent with federal regulations (e.g. exemptions, general permits, public notice procedures, criteria)

A state Section 404 Program must meet federal Clean Water Act standards,

- ...to protect interstate resources.
- ...to ensure a "level playing field" in the national wetland permit program.

"Any approved State Program shall, at all times, be conducted in accordance with the requirements of the [Clean Water] Act and of this Part.

While States may impose more stringent requirements, they may not impose any less stringent requirements for any purpose."

40 CFR §233.1

Maintaining Michigan's 404 program is important because....

- **State "404" permits are issued under state law**
- **Public Trust responsibilities and riparian rights**
- **Policies and procedures specific to state needs while federally consistent**

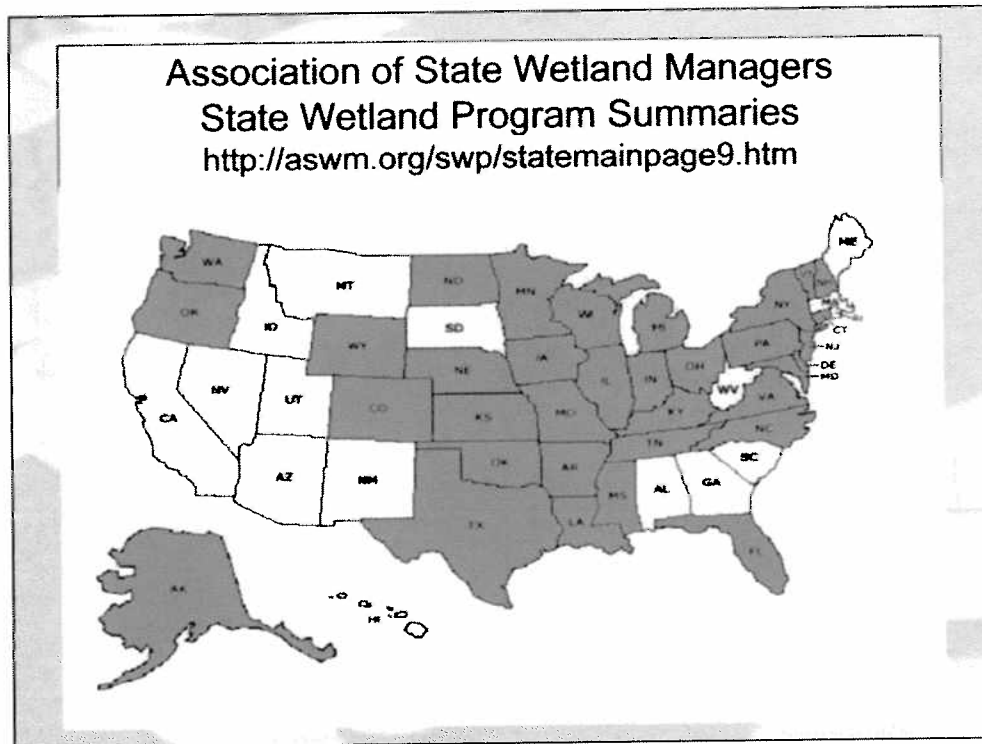


State law allows the state and local units of government more input into the permit process. Federal law does not consider public trust, or private property rights associated with riparian property. Examples of state-specific regulations, policies and procedures include: consolidated permit process, statutory permitting timeframes, limits on local ordinances, an impartial appeals process under the Administrative Procedures Act.

Appeals are heard by the Office of Administrative Hearings and Rules which is within the Department Labor and Economic Growth, soon to be the Michigan Administrative Hearings System which will be an autonomous Agency within the Department of Licensing and Regulatory Affairs (EO 2011-4).



**Michigan's
wetland
regulatory
program has served as a national model of
streamlining of state, federal, and local
regulations for over 25 years.**



All of the states shown in green have wetland programs. A summary of each state's program can be found on the Association of State Wetland Managers website. The summaries provided on the ASWM web site were completed in conjunction with a comprehensive study of state wetland programs conducted by the Environmental Law Institute. Links to all the reports can be found on the ASWM web site listed above. Michigan and New Jersey are the only 2 states that have been able to assume the Clean Water Act Section 404 program. In 2009, the Legislative Service Bureau also reviewed the ASWM and ELI studies and compiled a summary of wetland programs in some of the other Great Lake states. A copy of that report is included in your packet of information.

In 2008 EPA published findings from a 10 year review of Michigan's 404 Program.

EPA Identified Changes Needed to Maintain Federal Consistency:

É **Administrative Actions**

É **Revision of Administrative Rules
(Parts 301 and 303)**

É **Proposed Amendment of Part 303**

É **Updating of 404 Program
Memorandum Of Agreement**

Administrative actions include, consistent documentation of decisions, requiring applicants and department to co-sign permits, develop procedure to allow other states to comment on applications.

Rules Revisions include providing definitions for existing statutory exemptions, clarify procedures for revocation of a permit, and reference federal permit guidelines.

303 amendments to remove exemption for copper and iron mine tailings basins, modify exemptions for roads, county drains, agricultural drains, and utilities to be consistent with federal exemptions.

We have a draft MOA, which should reduce the number of permit applications that EPA will review. We are waiting for EPA to sign the MOA.

2009 Amendment Highlights:

- Created the Wetland Advisory Council.
- Requires DEQ to use the federal wetland delineation manual.
- Requires Issuance of new General Permit and Minor Project Categories.
- Requires DEQ to Pursue a State Programmatic General Permit with the U.S. Army Corps of Engineers.
- Created applicant assistance pilot project and mitigation bank partnering pilot project.

Applicant assistance pilot participants are: The Thumb Land Conservancy, Cannon Township in Kent County, and the 3 counties within the Michigan Association of Conservations Districts, Delta, Calhoun, and Muskegon.

The mitigation bank partnering pilot was limited to counties with a population of 500,000 or more. Only 2 entities applied and both are participating, Oakland County Water Resources Commissioner and Oakland County Parks and Recreation.

Wetland Program Budget

FY 2010 Expenditures

• GF-GP	\$0
• Federal	\$338,718
• State Restricted	
– MDOT-IDG	\$71,943
– Permit Fees	\$50,294
• Environmental Protection Fund	<u>\$1,952,782</u>
Total	\$2,413,737

There are currently 22 FTEs working within the wetland program. Most of these FTEs are partial positions, because WRD field staff work in all the consolidated permitting programs.

Summary of the Benefits of Michigan's Wetland Program:

- Provides clear consistent regulation
- Provides faster permit decisions
- Reduces regulatory burden for permit applicants
- Maintains state control, while remaining consistent with federal regulations
- Provides regulated property owners with better access to the permit decision makers
- Provide more public oversight of regulatory decisions
- Provides a fair impartial appeal process